



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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Order Instituting Rulemaking on the
Commission's Own Motion to Require
Interconnected Voice Over Internet Protocol
Service Providers to Contribute to the
Support of California's Public Purpose
Programs

R. 11-01-008

**REPLY COMMENTS OF THE CALIFORNIA CABLE &
TELECOMMUNICATIONS ASSOCIATION**

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March 22, 2011

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The California Cable & Telecommunications Association (“CCTA”), by its attorney and pursuant to the above-captioned Order Instituting Rulemaking (“Rulemaking”), hereby submits its Reply Comments.

I. TARGETED LEGISLATION IS THE PROPER MECHANISM TO ACCOMPLISH THE COMMISSION’S LIMITED OBJECTIVE IN THIS PROCEEDING.

All of the parties to the proceeding¹ agree that the universal service and other public purpose programs should be extended to include all VoIP voice providers so that, consistent with the limited objective of this Rulemaking, “California universal service programs are supported in a competitively and technologically neutral manner, and that contributions to the program are sufficient to preserve and advance universal service.”² To be sure that the universe of program participants is complete, all VoIP voice providers must include nomadic over-the top providers such as Vonage, Skype and Magic Jack or the Commission risks losing a substantial amount of revenue, and its programs will not be competitively and technologically neutral.

¹ (CCTA received comments from AT&T, Verizon, TURN, DRA, CPSD, SureWest, the small LECs, Comcast Phone of California, LLC, Greenlining, Disability Rights and CalTel.)

² Rulemaking at 2.

The divergence in the parties' positions in the opening comments focuses on the means to accomplish inclusion of all providers. Existing providers, which include telephone corporations (both ILECs and CLECs) and cable companies or their affiliates that already pay the surcharges, persuasively argue that the proper way to accomplish the Commission's limited objective is to seek appropriate legislative authority, as was sought and enacted concerning 911 surcharges in 2008 in SB 1040. This is because, as Verizon points out in its Opening Comments, the language of the 911 legislation clearly indicates that the legislature does not want to impose legacy regulation related to telephone corporations on new technology voice services, such as VoIP, via the use of definitional statutes that date to 1951 (and whose origins actually trace to 1913).

Instead, as the SB 1040 process indicates, the legislature wants to scrutinize the need for any VoIP regulation on a case by case basis, focusing on the purpose to be served by the regulation and limited to the objective sought. In the case of 911 support, competitively neutral payment of 911 surcharges by all voice providers required the addition of VoIP providers to the existing statute. The legislature was precise in its action; include the new technology in the statute, but do not impose further regulations on VoIP providers. As it stated, "it is the intent of the Legislature that telephone quality communication utilizing VoIP shall not be regulated by the enactment of [the bill]."³

That clear expression of legislative intent should be observed by the Commission here. In fact, that legislative intent has been observed in all earlier Commission proceedings dealing with VoIP, not regulating VoIP unless authorized by the legislature, meanwhile awaiting the FCC's classification of VoIP under federal law.⁴ This is a particularly wise course since the FCC has just

³ Cal. Rev. & Tax Code Section 41019.5

⁴ (See e.g. D.06-06-010, D.09-07-019 and D.10-11-033)

recently renewed its examination of the proper regulatory classification for VoIP providers in the context of exploring broader universal service and intercarrier compensation reform.⁵

In contrast, TURN would have the Commission ignore the legislature's expressed wishes and federal policy, and broaden the entire scope of this proceeding so to make a finding that all VoIP providers are telephone corporations, exposing them to the full panoply of regulation that is imposed upon legacy telephone corporations.⁶ The Commission should summarily refuse this invitation since its limited objective does not require the imposition of all existing telephone regulations, but merely a limited legislative change that would be technologically and competitively neutral.

Further, it would be unwise public policy, generally. In fact, it would be the opposite of a measured approach that focuses on the actual need to impose regulations and their attendant costs based on actual harm to consumers or public policy programs. Imposition of any oversight requires the predicate need for targeted regulation followed by a tailored approach to fit the identified objective.⁷ In contrast, TURN's approach is bereft of any demonstrable need or targeted regulatory approach.

II. THE FCC'S SAFE HARBOR ALTERNATIVES SHOULD BE AVAILABLE TO ALL VOIP PROVIDERS.

One party, DRA, misstates the law indicating that "interconnected VOIP carriers providing fixed VOIP service cannot use the FCC interim safe harbor allocation factor and must provide

⁵ *Connect America Fund*, WC Docket No. 10-90, *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking*, released February 9, 2011.

⁶ TURN's argument references a Petition filed by CPSD seeking to impose Commission consumer protection requirements on VoIP providers that was refused by the Docket Office and has now been re-filed as a motion by CPSD. Responses to that motion are due on April 4, 2011 and will address the suspect nature of CPSD's allegations and the unnecessary nature of the relief sought.

⁷ The recent Lifeline decision (D. 10-01-026) that TURN emphasizes in its comments is an example of how the Commission should continue to act. There, the Commission did not impose any lifeline requirements on VoIP, but noted that should a VoIP provider voluntarily choose to participate in the lifeline program and seek state subsidy of rates, then it would be required to adhere to lifeline requirements as adopted and applied by the Commission. Contrary to TURN's assertion, there was no misuse of resources and time in reaching this conclusion.

universal service surcharge contributors based on their actual revenues.”⁸ In its *Declaratory Ruling*,⁹ the FCC indicates that the safe harbor allocation method was established for **all** interconnected VOIP providers in its 2006 *Interim Contribution Methodology Report*.¹⁰ This allocation method is allowed for all VoIP providers so that the states do not double count intrastate revenue and “treat as intrastate for state universal service purposes the same revenue that they treat at [sic] intrastate under the Commission’s universal service contribution rules.”¹¹ Thus, it would be contrary to federal policy to disallow the use of any methodology approved by the FCC.

Moreover, as the Commission is aware, many VoIP service plans, and generally the most economically attractive ones, are unlimited/any distance plans for which the VoIP provider does not track jurisdiction on a call by call basis. If the Commission were to disallow this methodology, it would drive up the cost of such plans, to the detriment of consumers, because it would impose tracking requirements on VOIP providers that are unnecessary to achieve the Commission’s limited objectives in this proceeding. Thus, DRA’s position is legally incorrect and contrary to the best interests of consumers.

III. REQUIRING SURCHARGES TO APPEAR AS LINE ITEMS ON BILLS IS UNNECESSARY.

As AT&T pointed out, the FCC does not require line item surcharges be placed on customer bills for federal universal service programs. Thus, it would be contrary to federal policy to impose that requirement at the state level.¹² The FCC’s determination that line itemization was unnecessary was based on its judgment that increased investment and innovation are promoted by not imposing

⁸ DRA Comments at 5. DRA also, mistakenly calls VOIP providers “carriers”, another determination that neither this Commission nor the FCC has made.

⁹ (*In the matter of Universal Service Contribution Methodology; Declaratory Ruling*, FCC 10-185, related November 5, 2010 at paras. 14 and 17)

¹⁰ (*Interim Contribution Methodology Order*, 21 FCC Rcd 7536 (2006))

¹¹ *Declaratory Ruling* at paras. 17

¹² AT&T fn. 57 at 14, referencing 47 CFR Section 54.712(a).

traditional telephone company regulation on VoIP providers.¹³ As the Commission's own experience to date indicates, fixed VoIP providers are collecting and remitting those surcharges without the need for explicit identification of each charge on a customer bill (though some may choose to do so voluntarily). As a result, there is no need to increase billing costs when the current practice provides the Commission the collection and remittance practice that already works.

IV. THE PROPOSED SIMPLE REGISTRATION FORM IS USABLE AFTER APPROPRIATE LEGISLATION IS ENACTED.

The simple registration form proposed by the Commission provides all the necessary information that the Commission would need to maintain a data base of entities that are required to collect and remit the surcharges, once legislation is enacted applying the surcharges to VOIP providers.

The proposal by TURN to adopt CPCN requirements for VoIP providers is overkill. This position betrays an agenda of wholesale imposition of all legacy telephone regulation on VoIP providers that does not conform to the Rulemaking's limited objective and runs counter to the FCC's concerns in the *Vonage Preemption Order* that entry and certification requirements could stifle new and innovative services.¹⁴ As AT&T points out, the FCC decision leading to this Rulemaking specifically indicates that the FCC's conclusion in the *Vonage Preemption Order*, prohibiting requirements that are state conditions of entry, remains in place.¹⁵ Thus, a simple registration form is the only process that meets FCC directives.

¹³ *Memorandum Opinion and Order, In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, FCC 04-267, released: November 12, 2004 ("Vonage Preemption Order") at paras 1 & 2.

¹⁴ *Id.* at 20.

¹⁵ AT&T Comments at 11, fn. 40.

V. HEARINGS ARE UNNECESSARY IF TARGETED LEGISLATION IS PURSUED & ENACTED.

AT&T's request for hearings can be avoided if targeted legislation is adopted, as proposed by the majority of comments in this proceeding. Absent that initiative, hearings to make sure that the surcharges are collected by all VoIP providers on a competitively and technologically neutral basis may well be necessary. Clearly, it would make neither economic sense nor good public policy to allow over-the-top VoIP providers to escape the requirements imposed on all voice providers. To conform to this Commission's limited objective, the imposition of surcharges must be universal as well as competitively and technologically neutral.

VI. CONCLUSION.

For all of the foregoing reasons, CCTA submits that targeted legislation that includes all VoIP providers will expeditiously and fairly accomplish the limited objectives of this Rulemaking.

Respectfully submitted,

**California Cable and Telecommunications
Association**

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March 22, 2011

CERTIFICATE OF SERVICE

I, Richelle Orlando, hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of REPLY COMMENTS OF THE CALIFORNIA CABLE & TELECOMMUNICATIONS ASSOCIATION ON THE ORDER INSTITUTING RULEMAKING, on all parties identified on the attached official service list for Proceeding R. 11-01-008.

Service was completed upon the official service list by electronic copy on e-mail address of record.

Executed on March 22, 2011 at Sacramento, California

/s/ RICHELLE ORLANDO

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